IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Sanwar Mal Vs. State of Rajasthan

S.B.CR.MISC. PETITION NO.974/2006

DATE OF ORDER :: November 14, 2006

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.Suresh Kumbhat, for the petitioner.
Mr. Ashok Upadhyaya, P.P.

BY THE COURT:

Heard learned counsel for the petitioner and the Public Prosecutor for the State.

By the instant criminal misc. petition under section 482 Cr.P.C., the petitioner has challenged the order dt. 4th July, 2006 passed by the Additional Sessions Judge, Ratangarh Camp Sujangarh, Distt. Churu (for short 'the appellate court' hereinafter), in Cr.Appeal No.62/96, whereby the appeal filed by the petitioner was allowed and the judgment and order dt. 23.10.1996 passed by the Additional Chief Judicial Magistrate,

Ratangarh, Distt. Churu (for short 'the trial court' hereinafter) was set aside and the matter was remanded to the trial court to put incriminating evidence, which was pointed out in the judgment of the appellate court and decide the matter afresh relying on two decisions of the Hon'ble Supreme Court in State of Maharashtra vs. Sukhvinder Singh Jinda, **AIR 1992 (SC) 2100;** and Tara Singh vs. State of Punjab, **AIR 1951 (SC) 441.**

Learned counsel for the petitioner submits that questions sought to be put to the petitioner by the order of the appellate court have already been put by the trial court. He has relied on a decision of Gauhati High Court in Chandra Lal Das & Ors. vs. State of Tripura, **2003 CRI.L.J. 2162,** wherein the Gauhati High Court held that an order for retrial of a criminal case is to be made in exceptional cases, and not unless the appellate court is satisfied that the Court trying the proceeding had no jurisdiction to try it or that the trial was vitiated by serious illegalities or irregularities or on account of misconception of the nature of the proceedings and on that account in substance there had been no real trial or that the prosecutor or an accused was for reasons over which he had no control, prevented from leading or tendering evidence material to the charge and in the interests of justice the appellate court deems it appropriate, having regard to

the circumstances of the case that the accused should be put on his trial again.

The judgment relied on by the learned counsel for the petitioner has no application to the facts of the instant case for the reason that the case is for retrial and the evidence produced by the prosecution was to be put to accused in his statement under section 313 Cr.P.C., which according to the appellate court on certain points was put to the accused and, therefore, the matter was remanded to the trial court to put incriminating evidence, which was pointed out in the judgment of the appellate court and decide the matter afresh. It cannot be said that the judgment and order impugned suffers from perversity as also if the judgment and order impugned is allowed to stand, it would result in serious miscarriage of justice or abuse of process of any court.

The petition is, therefore, dismissed.

[H.R.PANWAR],J.

m.asif/-